IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 308 of 1979

in

SPECIAL CIVIL APPLICATIONNo 1283 of 1976

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AHMEDABAD MUNICIPAL CORPN

Versus

SAURASHTRA PAINTS PRIVATE LTD

Appearance:

MR PRASHANT G DESAI, Advocate for Appellant

MR SB VAKIL, Sr. Advocate for Respondent

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE JAYANT PATEL

Date of decision: 20/12/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI for the Court)

1. The appellant - Municipal Corporation has challenged the judgement and order of the learned Single Judge quashing the proceedings initiated by the respondent corporation for the sale of the property scheduled in the petition and restraining the corporation from selling or attempting to sell by public auction or otherwise the property in question and from taking any steps against the property for recovery of its property tax dues for the period prior to the auction sale.

2. The respondent - petitioner had prayed for a direction against the municipal corporation for not proceeding with the sale of the property for realisation of its dues in respect of that property for any period between 24th February 1955 and 17th July 1973. According to the petitioner, since it had purchased the property bearing survey No. 70 admeasuring 6050 sq. yards (1 Acre & 7 Gunthas approximately), which was specified in the schedule to the petition, in a public auction which was held on 17th July 1973 by the Commissioner for taking Accounts pursuant to the orders made in Darkhast No. 304 of 1971 by the Ahmedabad City Civil Court for execution of the mortgage decree obtained by the Gujarat State Finance Corporation against the original owner mortgagor M/s Shivlal Virchand Contractor and a sale certificate was issued in respect of the said property, the respondent petitioner became its absolute owner from 17-1-1974 and had acquired a title free from all charges and mortgages created subsequent to the date of the first mortgage which was created on 24-2-1955 in favour of the Bombay State Finance Corporation by the original owner. The case of the respondent - petitioner was that, after the petitioner became the owner, the scheduled property could not be sold by the appellant corporation for recovery of its taxes which were due from the mortgagor -defaulter for the period between 24-2-1955 and 17-7-1973 in respect thereof. The case of the respondent is that, before it purchased the property at the said public auction, it had also acquired the decretal rights of the second mortgagee, which was the firm of M/s Rajendrakumar & Co. under a registered deed of assignment dated 20-9-1970. The second mortgage was created by the original owner in favour of that firm on 13-10-1964.

3. The municipal corporation, on the other hand, contended that the property tax was due in respect of the scheduled property for the years 1965-66, 1966-67, 1967-68 and 1968-69, and that, though the property was first mortgaged with the BSFC on 24th February 1955 by the original owner M/s Shivlal Virchand Contractor and again on 13th October 1964 with the firm of M/s Rajendrakumar & Co., these were only simple mortgages and the possession as well as the title were retained by the original owner who was primarily liable to pay the property tax for the aforesaid years. The property in question was admittedly attached by the municipal corporation for recovery of these dues on 22nd March 1973 i.e. before the sale was effected in favour of the present respondent at the public auction, pursuant to which he was issued a sale certificate. The case of the municipal corporation was that when the property was being sold at the public auction through the Court, the municipal corporation had filed an affidavit of its official of the Tax department on 15-5-1973 before the City Civil Court requesting specifically to draw the attention of any party who intended to purchase that property to the fact that the tax arrears of Rs.1,07,900=51 were due and payable to the municipal corporation in respect of the said property. It was also stated in that affidavit that the fact that the dues of the municipal tax constituted the `first charge' over the property should be incorporated in the conditions of auction sale and the same was also required to be brought to the notice of the intending bidder at the auction which was to commence, as per the advertisement published in the newspapers dated 18-3-1973, on 13-6-1973. It is only thereafter that the respondent purchased the property at the court auction. Its bid was accepted and the sale was confirmed on 28-11-1973 and the sale certificate was issued on 17-1-1974. It was contended that the respondent was thus fully aware that a large amount of tax was due and payable to the corporation before it purchased the property at the public auction. According to the corporation, the name of Shivlal Virchand Contractor continued in its record and no transfer was notified as required by the provisions of Chapter VIII of the Bombay Provincial Municipal Corporation Act, and that the Corporation was, therefore, entitled to recover the taxes for the period from 1-4-1965 to 31-3-1976 alongwith the charges of the demand notice and warrant fees, which total amount came to Rs.1,27,370=14. The demand notices were served by affixing them on the suit premises as the primarily liable person was not found at the suit premises.

4. The learned Single Judge, taking note of the fact that the respondent had got itself assigned the decretal rights of M/s Rajendrakumar & Co. in respect of the second mortgage, under the assignment deed dated 20-9-1970 and then purchased the suit property at the public auction held by the Court for the satisfaction of the mortgage decree obtained by the BSFC (its successor being GSFC) on the strength of the earlier mortgage dated 24-2-1955, held that the entire property in question was in view of the earlier mortgages of 24-2-1955 and 13-10-1964 consumed by the two earlier mortgage debts of the GSFC and M/s Rajendrakumar & Co. The claim of the municipal corporation for taxes was for the subsequent years i.e. 1965-66 to 1968-69 and therefore, "Whatever rights and liabilities that arose subsequent to the mortgage would be required to stand in a queue and wait till those earlier claims were satisfied". It was held that the subsequent sale which was effected in favour of the respondent to satisfy the mortgage debts could not fetch sufficient amount even to discharge those mortgage debts having priority, and, "when those two mortgage debts together consumed the whole of the property, nothing remained out of the property against which the subsequent charge-holder namely, the municipal corporation could proceed against. The attention of the learned Single Judge was pointedly drawn to a decision of the Division Bench of this Court in Haji Abdul Gafur Haji Husseinbhai v. The Ahmedabad Municipal Corporation, reported in VIII GLR 65, which was confirmed by the Supreme court in The Ahmedabad Municipal Corporation v. Haji Abdul Gafur Haji Husseinbhai, reported in AIR 1971 SC 1201 having a direct bearing on the interpretation of section 141 of the said Act, but the learned Single Judge held that, "The ratio of these judgements is only this much that a charge including the statutory charge under section 141 of the Bombay Provincial Municipal Corporation Act, 1949 becomes operative in respect of only those persons who deal with the property subsequently with the knowledge of the charge but not otherwise. The judgement proceeds on the well known principle of Section 100 of the Transfer of Property Act on the interpretation of which the case rested. To me, this citation appears to be absolutely irrelevant". It was held that the knowledge of the auction purchaser that there was a claim advanced by the municipal corporation against the property in question did not create any right in favour of the municipal corporation but only fastens the auction purchaser with the knowledge of the existence of such right. The right of the Corporation remains only a money claim. It was held that, "The property has

exhausted itself to answer the earlier liabilities. If it be so, the knowledge of the petitioner about the advancement of the alleged claim by the Corporation doesn't improve the position of the respondent corporation in any manner". This is how the learned Single Judge allowed the petition and set aside the recovery proceedings instituted by the Corporation and restrained it from recovering the property taxes which were due for the years 1964-65 to 1968-69 i.e. the period prior to the purchase of the property by the respondent.

5. The learned counsel appearing for the appellant municipal corporation contended that as the property tax was not paid, the municipal corporation was entitled to put the property to auction and recover the amount since it had a `first charge' over the property under Section 141 of the Act. It was further contended that the respondent was a transferee with the notice of the dues of property tax and therefore, the charge could be enforced against the property even after the transfer. The learned counsel further argued that the learned Single Judge had not properly appreciated the ratio of the decision of the Division Bench of this Court in Haji Abdul Gafur Haji Husseinbhai v. The Ahmedabad Municipal Corporation, reported in VIII GLR 65, which decision was confirmed by the Supreme Court. The learned counsel contended that the property tax was imposed on lands and buildings and not on the person and therefore, even if the land and building is transferred, the liability to pay the tax continues until the provisions of Chapter VIII are satisfied.

5.1 The learned counsel, in support of his contentions, placed reliance on the following decisions:

[a] The decision of the Division Bench in Haji Abdul Gafur Haji Husseinbhai v. The Ahmedabad Municipal Corporation, reported in VIII GLR 65, was cited for the proposition that, if there were arrears of tax due to the municipal corporation, the municipal corporation was entitled to a `first charge' on the property which was required to be shown in the proclamation of sale under Order 21 Rule 66 of the Code of Civil Procedure. In paragraph 5 of its judgement, the Division Bench in terms held that section 141 creating a `first charge' gives it a priority over other charges or mortgages irrespective of the point of time at which it comes into existence.

[a-i] The learned counsel also relied upon the decision of the Supreme Court in The Ahmedabad Municipal Corporation v. Haji Abdul Gafur Haji Husseinbhai, reported in AIR 1971 SC 1201, for the purpose of pointing out that the above decision of the Division Bench was confirmed and it was held that section 141(1) created a charge which was subject to prior payment of land revenue due to the State Government on such building or land. It however does not further provide that this charge is enforceable against the property charged in the hands of a transferee for consideration without notice of the charge. It was held, on facts, that there was no sufficient material on record to justify that the plaintiff should be fixed with any constructive notice of the arrears of municipal tax. In paragraph 9 of the judgement, the Supreme Court held that the High Court had taken the correct view of the legal position.

[b] Reliance was placed on the decision of the Supreme Court in Municipal Corporation of Delhi v. M/s Trigon Investment and Trading Pvt. Ltd., reported in AIR 1996 SC 1579, in which construing the pari materia provisions of the Delhi Municipal Corporation Act {sections 128 (4), 119 and 123 (Property Tax being levied upon the lands and their constituting the `first charge' on such lands / buildings) }, held that the transferee of the land / building is liable to pay the property tax due thereon not only for the period subsequent to the transfer in his favour but even for the period anterior to the transfer.

[c] Reliance was also placed on the decision in State Bank of Bikaner v. National Iron & Steel Rolling Corporation, reported in (1995) 2 SCC 19, in which the Supreme Court, dealing with section 11-AAAA of the Rajasthan Sales Tax Act, 1954 which provided that the liability under that Act for any amount of tax, penalty, interest and any other sum which was payable by a dealer or any other person shall be the first charge on the property of the dealer, or such person, held that the statute has created a first charge on the property of the dealer, and as held by the Supreme Court in Dattatreya Shanker Mote v. Anand Chintaman Datar, reported in (1974) 2 SCC 799, a charge is a wider term than a mortgage and would cover within its ambit a mortgage also and

therefore, when a first charge is created by operation of law over any property, that charge will have precedence over an existing mortgage.

[d] The decision of the Supreme Court in Board of Trustees, Port of Mumbai v. Indian Oil Corporation, reported in JT 1998 (3) 178 was cited for the proposition that the statutory right under section 64 of the Major Port Trust Act, 1963 to recover its taxes and charges stands above the rights of other creditors, secured or unsecured.

[e] The decision of the Supreme Court in R.M.Arunachalam v. Commissioner of Income Tax, reported in AIR 1997 SC 2905 was cited for the proposition that the claim in respect of estate duty will have precedence over the mortgages dues.

[f] The decision of the Court of Appeal in Westminster City Council v. Haymarket Publishing Ltd., reported in [1981] 2 All ER 555 was cited for the proposition that, "a charge on the land" imposed for an unpaid surcharge was not confined to a charge on the owner's interest in the premises when the charge arose but extended to a charge on all the estates and interests in the premises existing when the charge arose.

6. The learned senior counsel appearing for the respondent argued that the primary liability to pay property tax was only of the owner / occupier of the property during the year to which the property tax is related, more particularly when they become due under Rule 30 of Chapter VIII of the said Act. It was contended that subsequent transferee was not personally liable to pay those property taxes and Rule 3 of Chapter VIII did not lay down any such proposition. It was further argued that the auction purchaser was not a defaulter and it was the previous owner who was the defaulter and who alone could be held liable to pay the property taxes. The remedy of realising the tax by resort to section 141 of the Act could be had only against the defaulter's property and the respondent transferee, therefore, not being primarily liable to pay the property tax, could not be proceeded against by attaching his property. The learned senior counsel supported the decision of the learned Single Judge on the aspect that, by virtue of the mortgage decree in earlier mortgages, there remained nothing which could be attached

by the municipal corporation, because, the property had exhausted itself for payment of the earlier mortgage debts of the original owner. It was then argued that the first charge under section 141 would only mean that the charge was to be treated as first in point of time qua other charges and the expression did not elevate the priority right to a position where it could take precedence over the dues of the earlier mortgages. The first charge, according to the learned senior counsel, meant first among `charges' and not first among `mortgages and charges'. It was contended that the use of the word `first' did not create any priority and even if it has created such priority, that charge cannot be enforced against the property in the hands of a transferee for consideration without notice of the charge. It was also contended that the respondent did not have the notice of the charge that the municipal corporation had over the property. Referring to the decision of the Division Bench of this Court in Haji Abdul Gafur Haji Hussenbhai (supra), the learned senior counsel contended that the Division Bench had made only a passing observation in paragraph 5 of the judgement while stating that the first charge gave priority over other charges or mortgages and it did not consider the provisions of the Transfer of Property Act. It was submitted that there was no application of mind to the meaning of the words `first charge' used in section 141 of the Act. As regards the decision of the Supreme Court in State Bank of Bikaner (supra), it was argued that, in view of the non-obstante clause of section 11-AAAA of the Rajasthan Act, the only argument open to the learned counsel in that case was that the first charge was only on the equity of redemption. It was conceded by the learned counsel that the first charge would not be only on equity of redemption, but the charge was over the entire property. It was however argued that the first charge under section 141 was not subject to any non-obstante clause as the one found in section 11-AAAA of the Rajasthan Act.

7. As noticed from the averments made in the petition and the affidavit in reply, the facts fall in a narrow compass. Admittedly, the respondent became the owner of the property in question when the sale was confirmed and sale certificate was issued to it on 17th January 1974. Prior to that, the respondent had acquired the decretal rights of the second mortgagee under a deed of assignment dated 20th September 1972.

7.1 Section 141(1) which falls for our consideration reads as under :

"Section - 141(1) : Property taxes due under this Act in respect of any building or land property shall, subject to the prior payment of the land revenue, if any, due to the State Government thereupon, be a first charge, in the case of any building or land held immediately from the Government, upon the interest in such building or land of the person liable for such taxes and upon the movable property, if any, found within or upon such building or land and belonging to such person; and in the case of any other building or land, upon the said building or land and upon the movable property, if any, found within or upon such building or land and belonging to the person liable for such taxes.

Explanation - The term `property taxes' in this section shall be deemed to include charges payable under section 134 for water supplied to any premises and the costs of recovery of property taxes as specified in the rules."

7.2 A plain reading of the above provision shows that the property taxes due under the Act in respect of any building or land belonging to any person shall be a `first charge' upon such building or land. Section 139 lays down as to on whom the primary responsibility for property taxes shall rest, while section 128 of the Act indicates the manner of recovery of municipal taxes which under clause (4) thereof includes attachment and sale of defaulter's immovable property.

7.3 Chapter VIII of the said Act contains taxation rules which lay down the requirement of notice of transfer etc. of premises assessable to property tax. Under Rule 1(1), it is provided that whenever a title of any person, primarily liable for the payment of property taxes on any premises, to or over such premises is transferred, the person whose title, is so transferred and the person to whom the same shall be transferred shall, within three months after execution of the instrument of transfer, or after its registration, if it be registered or after the transfer is effected if no instrument be executed, give notice of such transfer, in writing, to the Commissioner. Under Rule 3, it is provided that liability for payment of property taxes would continue in absence of any notice of transfer until such notice is given or until the transfer is recorded in

the commissioner's books. It is in terms laid down in Rule 3(2) that, nothing in Rule 3 shall be held to diminish the liability of the transferee for the property taxes or to affect the prior claim of the Commissioner on the premises conferred by section 141 for the recovery of the property taxes due thereupon. As provided by section 453 of the said Act, the Rules contained in Schedule `A' including the aforesaid Rules as amended from time to time "shall be deemed to be part of this Act". Thus, sub-rule 2 of rule 3 will have the effect of a provision contained in the Act itself. Admittedly, no notice of transfer was ever given to the Municipal Commissioner, nor any attempt made to get the transfer effected in the Commissioner's books. Rule 45 of the Rules provides for issuance of warrant for attachment and sale of immovable property for recovery of the property taxes and sub-rule (3) thereof provides that any transfer or a charge on the property attached or of any interest therein made without the written permission of the Commissioner shall be void as against all claims of the Corporation enforceable under the attachment.

7.4 Transfer of Property Act, 1882 makes provisions for charges in Chapter IV, and, section 100 thereof provides as under :-

"Section 100 ::

Where immovable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have charge on the property, and all the provisions hereinbefore contained which apply to a simple mortgage shall, so far as may be, apply to such charge.

Nothing in this section applies to the charge of a trustee on the trust property for expenses properly incurred in the execution of his trust, and, save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge."

8. It will be noticed from the above provision that a charge cannot be enforced against any property in the hands of a person to whom such property has been

transferred for consideration and without notice of the charge, save as otherwise expressly provided by any law for the time being in force. The provision in section 141 that there shall be first charge of the municipal corporation in respect of its dues gives priority to the charge of the municipality. Even such charge, however, could not be enforced against any property in the hands of a person to whom it has been transferred for consideration without notice of the charge.

8.1 The contention of the learned senior counsel appearing for the respondent was that, under section 141 of the said Act, the first charge was only in respect of the earlier charges that may have been created on the property and it had no reference to the earlier mortgages. It was submitted that, in view of section 48 of the Transfer of Property Act, the priority of rights created by transfer was fixed in relation to the different times at which the rights were created, and that since the charge was not a right in the property while a mortgage was an interest in the property, the mortgagee's interest stood higher than the charges that may have been created over the property. We are unable to accept this contention which would make the provisions of section 141 of the said Act nugatory. The provisions of section 141 had fallen for consideration by a Division bench of this Court in Haji Abdul Gafur Haji Hussenbhai (supra) and it was in terms held that section 141 created a charge and gave a priority over other charges or mortgages irrespective of point of time at which it came into existence. It was noted that, ordinarily when a charge is created, it would rank after any charge or mortgage created prior in point of time. However, such ordinary ranking according to the order in which the charges or mortgages are created is displaced by the rule enacted in section 141 and that section declared that the charge created under it shall be a first charge so that it will have priority even over the charges and mortgages created earlier in point of time. The Division Bench also considered the provisions of section 100 of the Transfer of Property Act and held: "Whether the charge was a first charge or a second charge or an nth charge makes no difference so far as the rule as to enforceability of the charge enacted in the second para of section 100 was concerned and such charge whatever be its ranking cannot be enforced against a transferee for value without notice. The scope and object of section 141 and the second paragraph of section 100 are fundamentally different : the former provides for the creation and ranking of the charge while the latter provides for the enforceability of the charge against the

property in the hands of a transferee".

8.2 It is thus abundantly clear that the Division Bench was fully aware of the provisions of the Transfer of Property Act including section 48 as well as the provisions of the said Act, and there is no question of the Division Bench not having applied its mind to the meaning of the expression `first charge' occurring in section 141 as presumed by the learned Single Judge. We are in respectful agreement with the ratio of the decision in Haji Abdul Gafur (supra) on the question of interpretation of section 141 of the said Act and therefore, there can arise no ground for referring the matter to a larger Bench, as was suggested by the learned counsel.

8.3 Not only the Division Bench has construed the provisions of section 141 so as to mean that the first charge of the municipal corporation in respect of its dues would prevail over earlier charges and mortgages, but even the Supreme Court in Municipal Corporation of Delhi v. Trigon (supra), while construing the para materia provisions of section 123 of the Delhi Act, has in terms held that the transferee of the land / building was liable to pay the property taxes due thereon not only for the period subsequent to the transfer in his favour but even for the period anterior to the transfer. It was held by referring to the provision of section 128(1) of the Delhi Act (similar to Rule 1 of Chapter VIII of the said Act) that the substantive liability of the owner to pay taxes cannot be defeated by the non-intimation under section 128 or by the failure of the transferee to have his name entered in the municipal records. Section 128 kept alive and continued the liability of the transferor to pay property taxes even after the transfer till he gives notice contemplated by section 128(1). Such liability would not relieve the transferee from the obligation to pay the tax as declared in section 128(4). Property tax due under that Act in respect of any land or building constituted the first charge upon such land and building subject only to the prior payment of land revenue as provided under section 123(1) (similar to section 141(1) of the said Act). It was held in paragraph 15 of the judgement that, "Since the property taxes constitute first charge upon the land / building and because the land or building is fastened with this liability, the liability transfers with the land / building. The transferee is liable to pay the property tax due thereon not only for the period subsequent to transfer in his favour but even for the period anterior to the transfer". There cannot be a clearer

pronouncement on the point in issue and this decision is squarely applicable to the interpretation of the provisions of section 141 of the said Act.

9. The distinction which was sought to be made by the learned senior counsel in the context of the provisions of section 11-AAAA of the Rajasthan Sales Tax Act, 1954, which was considered by the Supreme Court in State Bank of Bikaner (supra), on the basis of the non-obstante clause that occurs in that provision is hardly material for the purpose of deciding whether the first charge statutorily created would prevail over earlier mortgages or not. In paragraph 7 of the judgement, the Supreme Court in terms held that, a charge can be created either by an act of parties or by operation of law and that, a charge is a wider term as it includes also a mortgage, in that, every mortgage is a charge, but every charge is not a mortgage. In paragraph 8 of the judgement, the Supreme Court held that, where a mortgage is created in respect of any property, undoubtedly, an interest in the property is carved out in favour of the mortgagee. The mortgagor is entitled to redeem his property on payment of the mortgage dues. This does not, however, mean that the property ceases to be the property of the mortgagor. The title to the property remains with the mortgagor. Therefore, when a statutory first charge is created on the property of the dealer, the property subjected to the first charge is the entire property of the dealer. The interest of the mortgagee is not excluded from the first charge. It will thus be seen that this reasoning of the Supreme Court is not based on the non-obstante clause of section 11-AAAA of the Rajasthan Sales Tax Act, but is based on the interpretation of the expression `first charge' in context of earlier charges and mortgages. In paragraph 11 of the judgement, the Supreme Court in terms held that, when a charge was first created by operation of law over any property, that charge would have precedence over an existing mortgage. This is sufficient to shut out any argument that the expression `first charge' was meant to give priority only in context of other charges and not in context of mortgages.

9.1 In Dena Bank v. Bhikhabhai Prabhudas Parekh reported in (2000) 5 SCC 694, it is held that the principle of priority of government debts is founded on the rule of necessity and of public policy. The basic justification for the claim for priority of State debts rests on the well recognised principle that the State is entitled to raise money by taxation because unless adequate revenue is received by the State, it would not

be able to function as a sovereign Government at all. It is essential that as a sovereign, the State should be able to discharge its primary governmental functions and in order to be able to discharge such functions efficiently, it must be in possession of necessary funds and this consideration emphasized the necessity and the wisdom of conceding to the State, the right to claim priority in respect of its tax dues. (See also paragraph 22 of the decision of the Supreme Court in M/s Builders Supply Corporation v. The Union of India reported in AIR 1965 SC 1061).

9.2 We may also refer to Westminster City Council v. Haymarket Publishing Ltd. (supra) in which, following the earlier decisions in Birmingham Corporation v. Baker reported in (1881) 17 Ch D 782 and Paddington Borough council v. Finucane reported in (1928) All ER Rep 428, it was held that a charge on premises would mean the charge upon the entirety of the interest of the premises, the whole of the proprietary interests of the premises and that `a charge on the land' means a charge on `all the estates and interests in the land'. It was observed that; "This conforms with the intention of Parliament. Any other view would mean that it would be open to companies, by manipulation of their affairs between holding and subsidiary companies, to avoid the charge altogether. The land could be bought in the name of a subsidiary company with money obtained on mortgage from a holding company: and, lo and behold, the charge would be gone. That cannot be right". Thus, the first charge on the property in question was on the whole property and could therefore be enforced irrespective of the fact that the property was earlier mortgaged.

9.3 We are, therefore, of the view that the learned Single Judge was, with respect, in error while holding that the property had exhausted while satisfying the earlier mortgage dues and therefore, there remained nothing which could satisfy the tax dues of the municipal corporation on the basis that they are having first charge over the property in question as contemplated by section 141 of the said Act.

10. The fact that the respondent - purchaser was having a prior notice of the municipal dues clearly stares from the material on record and can hardly be disputed. After the warrant of attachment was pasted on the property in question on 22nd March 1973, the respondent through its advocate sent a notice to the municipal corporation on 14th April 1973, as per Annexure `D' to the petition, in which it was clearly stated in

paragraph 6 that the respondent had seen the order of attachment dated 22-3-1973 affixed on a part of the property sought to be attached by the municipal corporation in which it was stated that, in case of default in payment of the arrears of taxes, the attached property would be sold. The affidavit-in-reply of the Deputy Assessor & Collector of the Municipal Corporation, Mr. Mohmed Yusuf G. Shaikh, filed on 15-3-1973 in the Court, specifically drew the attention of any party who intended to purchase the said property that a tax of Rs.1,07,900=51 was due and payable to the municipal corporation as arrears of tax on that property. It was prayed by the Corporation that, in the conditions of the auction sale, this fact may be incorporated. Accordingly, the City Civil Court made an order on 13-6-1973 in which it was ordered that the dues of the municipal corporation should be shown to the intending purchaser / bidder at the commencement of the auction. It is thus abundantly clear from the record that the respondent had ample notice of the first charge of the municipal corporation under section 141 of the Act in respect of the property tax due on the building and land in question which was being sold at the public auction. It is thus clear that the first charge of the corporation in respect of the said building and land purchased by the respondent with the prior notice of the property tax dues could be enforced even against the respondent by initiating the recovery proceedings permissible under the law, namely, by attaching and putting to auction the property on which the first charge was created. We therefore do not find any substance in any of the contentions raised on behalf of the respondent.

11. For the forgoing reasons, the appeal is allowed. The impugned order of the learned Single Judge is set aside and the petition stands rejected. There shall be no order as to costs.

DECEMBER 20, 2001 [R.K.ABICHANDANI, J.]

[JAYANT PATEL, J.]

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